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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,528	12/07/2001	Pankaj K. Jha	0325.00524	8197

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EXAMINER

TORRES, JOSEPH D

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/017,528

Applicant(s)

JHA, PANKAJ K.

Examiner

Joseph D. Torres

Art Unit

2133

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): rejections of claims 3 and 16.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 3 and 16.
Claim(s) rejected: 1,2,4-8,14 and 17-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Joseph D. Torres, PhD
Primary Examiner
Art Unit: 2133

Continuation of 11: The Applicant contends, "The 11/09/2004 Office Action fails to clearly developed the rejections for claims 3, 4 and 20. Claims 3 and 4 were amended after the 04/02/2004 Office Action yet the 11/09/2004 Office Action merely repeats the 04/02/2004 rejections without accounting for the amendments".

The Examiner asserts that the Examiner addressed all the issues presented in the applicant's previous arguments and that the Applicant made no attempt to argue any issues concerning claims 3, 4 and 20 in the Applicant's previous arguments. The Examiner would also like to point out that the 37 CFR 1.111 (b) requires that any time an Applicant amends that the Applicant set forth specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. In view of the Applicant's reluctance to present arguments in the Applicant's previous response, the Examiner asserts that the Applicant himself must have viewed the claims as adequately addressed. The Examiner asserts that claims 3, 4 and 20 were adequately addressed in the Examiner's previous Office Action.

The Applicant contends, "In particular, none of the arguments on pages 11-12 of the 11/09/2004 Office Action make any reference to the claimed length circuit or the claimed length signal".

The Examiner asserts that the Abstract in Agarwal commences by stating that the invention in the Agarwal patent is directed to a method for adaptive control of a forward error correction code including the step of determining a forward error correction code length based on the byte error rate (see Figure 5 in Agarwal). Figure 4 in Agarwal is an apparatus incorporating the method of claim 5 in Agarwal.

The Applicant contends, "Since the preamble 'An apparatus' does not appear to limit the claimed invention, the text of claim 14 following 'comprising:' already particularly points out and distinctly claims the invention. As such, claim 14 is fully compliant with 37 CFR 1.71". The Examiner disagrees and asserts that the body of claim 14 is comprised of means for carrying out various method steps. Nowhere does claim 14 give any indication of what that method is. The Applicant has omitted an essential element necessary to determine what the invention is directed to. See MPEP § 2172.01.

The Examiner withdraws the new matter rejection of claim 3-5 and 16-20.

The Applicant contends, "Agarwal and Doshi, alone or in combination, do not appear to teach or suggest a step for receiving a frame comprising a length field storing a length value for a combined length consisting of a payload field and a payload error detection field as presently claimed. Applicant's representative traverses the assertion on page 5 of the 11/09/2004 respectfully Office Action that 'specifying the length of the variable portion is inherently equivalent certainly specifying the total length'. Inherency requires results, not mere possibility".

The Examiner asserts that in Figure 2 the Frame Header is $t=2$ octets in length. The rest of the Frame is comprised of payload and error correction. The last paragraph of Col. 6 and the first paragraph of col. 7 in Agarwal teach that SIZEO 264 contains the variable u size defining the space within the data payload and the CODING field represents a suggested value v of the number of octets which are reserved for forward error correction. The Examiner asserts that the total length is equal to $t + u + v$. Furthermore; Agarwal teaches variable length packets. It would be impossible to correctly receive a variable length packet without knowing where the beginning and the end of the packet is much less correctly receive subsequent packets. There must be adequate information in the packet to make that determination. Agarwal clearly teaches the provision of adequate information.

The Applicant contends, "The alleged motivation on page 8 of the 04/02/2004 Office Action 'to provide protection for important control information contained in the header' appears to be credited to the Abstract of Doshi per page of the 11/09/2004 Office Action. However, the Abstract of Doshi does not appear to contain the alleged motivation. Therefore, prima facie obviousness has not been established for lack of clear and particular evidence of motivation".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, even if the Doshi didn't explicitly state the motivation cited in the Office Action, both Doshi and Agarwal teach that header is control information use for determining the boundaries of a frame and deframing. One of ordinary skill in the art at the time the invention was made would have known CRC is a means for providing error protection and knowing that header control information is critical for synchronizing and deframing would have been highly motivated to provide addition error protection for the header as is done in the Doshi patent.

The Applicant contends, "Therefore, Agarwal and Doshi, alone or in combination, do not appear to teach or suggest a step for marking a start of a payload field in response to an intermediate error detection value matching a received value as presently claimed." Figure 2 explicitly teaches that a frame header is 2 octets long. The Payload starts 2 octets into the frame.

The Examiner withdraws the rejection to claims 3 and 16.

Claims 3 and 16 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.